

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

IN RE: SHALE OIL ANTITRUST  
LITIGATION

Case No. 1:24-md-03119-MLG-LF

This Document Relates to All Actions

**DEFENDANTS’ NOTICE OF SUPPLEMENTAL AUTHORITY**

Defendants respectfully call the Court’s attention to *In re Concrete & Cement Additives Antitrust Litigation*, 24-md-3097 (LJL) (S.D.N.Y. June 25, 2025) (“Op.”), attached hereto as Exhibit A, granting defendants’ motion to dismiss an action that, like this case, alleged price fixing in violation of federal antitrust law and state laws. Like plaintiffs here (Dkt. 129 (“MTD”) 19-20), the *Concrete* plaintiffs did not allege direct evidence of price fixing but relied on allegations of parallel conduct and “plus factors” (Op. 21).

The court rejected the allegations of parallel conduct because the pleaded price increases were different in amounts, ranging from 1.9% to 20%, and occurred at different times over ten months. (*Id.* 21-32.) Here, defendants allegedly changed their production rates by amounts even more divergent than in *Concrete*—from -63% to +56%—and the changes occurred over an even longer period, three years. (MTD 22-24; *see also* Op. 30 (“Ten months is a long time. Plaintiffs do nothing to establish how a price increase in the last month or two of that period has any relation to a price increase at the beginning of the period.”).) Plaintiffs here also “do not identify any overarching pattern connecting these divergent increases to one another.” (Op. 29.) As in *Concrete*, these failures are “fatal to their claims under Section 1.” (*Id.* 34.)

The *Concrete* court also rejected purported plus factors that track the ones plaintiffs rely on here—that defendants (i) belonged to the same trade associations; (ii) operated in a highly consolidated market; (iii) were similarly motivated to conspire; (iv) were subject to investigations by UK, EC, and U.S. antitrust regulators; (v) did not reduce prices when input costs declined; and (vi) told investors that they were focused on disciplined pricing to improve profitability (*id.* 35-48)—holding they were consistent with competition and did not suggest an agreement to fix prices. Plaintiffs’ alleged plus factors here similarly do not render the alleged conspiracy plausible. (MTD 25-32.)

Finally, because the Section 1 claim failed, the *Concrete* court dismissed the state law claims (Op. 48-50), which supports defendants’ similar argument here (MTD 38-39).

Dated: June 30, 2025

Respectfully submitted,

/s/ Boris Bershteyn

Boris Bershteyn  
Karen M. Lent  
Michael H. Menitove  
SKADDEN, ARPS, SLATE,  
MEAGHER & FLOM LLP  
One Manhattan West  
New York, New York 10001-8602  
Telephone: (212) 735-3000  
boris.bershteyn@skadden.com  
karen.lent@skadden.com  
michael.menitove@skadden.com

Kenneth A. Gallo  
PAUL, WEISS, RIFKIND, WHARTON &  
GARRISON LLP  
2001 K Street, NW  
Washington, DC 20006-1047  
Telephone: (202) 223-7300  
kgallo@paulweiss.com

William B. Michael  
PAUL, WEISS, RIFKIND, WHARTON &  
GARRISON LLP  
1285 Avenue of the Americas  
New York, NY 10019-6064  
Telephone: (212) 373-3000  
wmichael@paulweiss.com

Samuel G. Liversidge  
Jay P. Srinivasan  
S. Christopher Whittaker  
GIBSON, DUNN & CRUTCHER LLP  
333 South Grand Avenue  
Los Angeles, CA 90071-3197  
Telephone: (213) 229-7000  
sliversidge@gibsondunn.com  
jsrinivasan@gibsondunn.com  
cwhittaker@gibsondunn.com

Eric R. Burris  
BROWNSTEIN HYATT  
FARBER SCHRECK, LLP  
201 Third Street NW, Suite 1800  
Albuquerque, NM 87102-4386  
Telephone: (505) 244-0770  
eburris@bhfs.com

*Attorneys for Defendant  
Pioneer Natural Resources Company*

By: /s/ Benjamin F. Feuchter  
Benjamin F. Feuchter  
Thomas C. Bird  
JENNINGS HAUG KELEHER MCLEOD  
201 Third Street NW, Suite 1200  
Albuquerque, NM 87102  
Tel: (505) 346-4646  
bf@jhkmlaw.com  
tcb@jhkmlaw.com

John M. Taladay  
Christopher Wilson  
Kelsey Paine  
Megan Tankel  
BAKER BOTTS L.L.P.  
700 K Street NW  
Washington, D.C. 20001-5692  
Tel: (202) 639-7909  
john.taladay@bakerbotts.com  
christopher.wilson@bakerbotts.com  
kelsey.paine@bakerbotts.com  
megan.tankel@bakerbotts.com

*Attorneys for Defendant  
EOG Resources, Inc.*

By: /s/ Benjamin Allison  
Benjamin Allison  
Billy Trabaudo  
BARDACKE ALLISON MILLER LLP  
P.O. Box 1808  
141 E. Palace Avenue  
Santa Fe, NM 87501  
Tel: (505) 995-8000  
ben@bardackeallison.com  
billy@bardackeallison.com

Jeffrey L. Kessler  
Jeffrey J. Amato  
WINSTON & STRAWN LLP  
200 Park Avenue  
New York, NY 10166  
Tel: (212) 294-6700  
jkessler@winston.com  
jamato@winston.com

Thomas M. Melsheimer  
Thomas B. Walsh, IV  
WINSTON & STRAWN LLP  
2121 N. Pearl Street, Suite 900  
Dallas, TX 75201  
Tel: (212) 294-6700  
tmelsheimer@winston.com  
twalsh@winston.com

*Attorneys for Defendant  
Diamondback Energy, Inc.*

By: /s/ Marguerite M. Sullivan

Marguerite M. Sullivan  
LATHAM & WATKINS LLP  
555 Eleventh Street, N.W., Suite 1000  
Washington, D.C. 20004  
Tel: (202) 637-2200  
Marguerite.Sullivan@lw.com

Lawrence E. Buterman  
LATHAM & WATKINS LLP  
1271 Avenue of the Americas  
New York, NY 10020  
Tel: (212) 906-1200  
Lawrence.Buterman@lw.com

*Attorneys for Defendant  
Expand Energy Corporation  
(F/K/A Chesapeake Energy Corporation)*

By: /s/ Kevin S. Schwartz

Kevin S. Schwartz  
David A. Papirnik  
WACHTELL, LIPTON, ROSEN &  
KATZ  
51 West 52nd Street  
New York, NY 10019  
Tel: (212) 403-1062  
kschwartz@wlrk.com

Benjamin E. Thomas  
RODEY, DICKASON, SLOAN,  
AKIN & ROBB, P.A.  
201 3rd Street NW, Suite 2200  
Albuquerque, New Mexico 87102  
Tel: (505) 765-5900  
bthomas@rodey.com

*Attorneys for Defendants  
Hess Corporation and John Hess*

By: /s/ Earl E. DeBrine, Jr.  
Earl E. DeBrine, Jr.  
MODRALL, SPERLING, ROEHL,  
HARRIS & SISK, P.A.  
500 4th St. NW, Suite 1000  
Albuquerque, NM 87102  
Tel: (505) 848-1800  
earl.debrine@modrall.com

Devora W. Allon  
KIRKLAND & ELLIS LLP  
601 Lexington Avenue  
New York, NY 10022  
Tel: 212-446-5967  
devora.allon@kirkland.com

Jeffrey J. Zeiger  
KIRKLAND & ELLIS LLP  
333 West Wolf Point Plaza  
Chicago, IL 60654  
Tel: 312-862-3237  
jzeiger@kirkland.com

*Attorneys for Defendant  
Occidental Petroleum Corporation*

By: /s/ H. Brook Laskey  
H. Brook Laskey  
Kevin J. Banville  
MCCOY LEAVITT LASKEY LLC  
317 Commercial St. NE, Suite 200  
Albuquerque, NM 87102  
Telephone: (505) 246-0455  
blaskey@MLLlaw.com  
kbanville@MLLlaw.com

Christopher E. Ondeck  
Stephen R. Chuk  
PROSKAUER ROSE LLP  
1001 Pennsylvania Avenue NW  
Washington, DC 20004  
Tel: (202) 416-6800  
condeck@proskauer.com

schuk@proskauer.com

Kyle A. Casazza  
PROSKAUER ROSE LLP  
2029 Century Park East, Suite 2400  
Los Angeles, CA 90067-3010  
Tel: (310) 284-5677  
kcasazza@proskauer.com

Michael Burrage  
WHITTEN BURRAGE  
512 North Broadway Avenue, Ste 300  
Oklahoma City, OK 73102  
Tel: (888) 783-0351  
mburrage@whittenburrage.com

*Attorneys for Defendant  
Continental Resources, Inc.*

By: /s/ Michael W. Scarborough

Michael W. Scarborough  
Dylan I. Ballard  
VINSON & ELKINS LLP  
555 Mission Street, Suite 2000  
San Francisco, CA 94105  
Tel: (415) 979-6900  
mscarborough@velaw.com  
dballard@velaw.com

Craig P. Seebald  
Stephen M. Medlock  
VINSON & ELKINS LLP  
2200 Pennsylvania Avenue NW, Suite 500 West  
Washington, DC 20037  
Tel: (202) 639-6500  
cseebald@velaw.com  
smedlock@velaw.com

*Attorneys for Defendant  
Permian Resources Corp.*



By: /s/ David I. Gelfand

David I. Gelfand  
Jeremy J. Calsyn  
Joseph M. Kay  
CLEARY GOTTlieb STEEN &  
HAMILTON LLP  
2112 Pennsylvania Avenue NW  
Ste 1000  
Washington, DC 20037  
Tel: (202) 974-1690  
dgelfand@cgsh.com  
jcalsyn@cgsh.com  
jkay@cgsh.com

Kurt A. Sommer  
SOMMER UDALL LAW FIRM, P.A.  
PO Box 1984  
Santa Fe, NM 87504  
Tel: (505) 982-4676  
kas@sommerudall.com

*Attorneys for Defendant  
Scott D. Sheffield*